

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIDALCO INTERNATIONAL LLC,

Plaintiff,

-v-

3 G's VINO LLC,

Defendant.

16 Civ. 5241 (PAE) (KNF)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Before the Court is the March 4, 2019 Report and Recommendation of Magistrate Judge Kevin Nathaniel Fox that the Court award plaintiff Vidalco International LLC ("Vidalco") \$101,079.88 in damages and interest of nine percent per annum on \$101,079.88, to be calculated commencing on May 2, 2016, and ending on the date of the judgment. Dkt. 31 (the "Report"). For the following reasons, the Court adopts the Report in full.

I. Background

On July 7, 2016, Vidalco commenced this action by filing the Complaint, Dkt. 1, alleging (1) goods sold and delivered, (2) breach of contract, (3) account stated, and (4) quantum meruit. On October 24, 2016, a judgment of liability against defendant 3 G's VINO LLC ("3 G's") was granted and the action was referred to Judge Fox for an inquest into damages. Dkt. 17. On October 4, 2017, Judge Fox issued a report recommending that no damages be awarded to Vidalco. Dkt. 24 (the "2017 Report"). On October 17, 2017, Vidalco timely objected to the 2017 Report. Dkt. 25. On October 17, 2018, the Court accepted Vidalco's objections to the 2017 Report and respectfully directed Judge Fox to receive certain supplemental documentation submitted by Vidalco into evidence and to reconsider the motion for damages. Dkt. 30.

On March 4, 2019, Judge Fox issued the Report under review. The Report concluded that Vidalco's supplemental evidence, including the declaration of its principal and attached exhibits, established, with reasonable certainty, Vidalco's damages in the amount of \$101,079.88. The Report further concluded that Vidalco is entitled to statutory interest of nine percent per annum under N.Y. C.P.L.R. § 5004, on the amount of \$101,079.88, to be calculated commencing on May 2, 2016, and ending on the date of the judgment.

The deadline for parties to file objections to the Report was March 18, 2019. Report at 4. To date, no objections have been filed.

II. Discussion

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF) (RLE), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009), *aff'd*, 453 F. App'x 88 (2d Cir. 2011) (summary order)) (internal quotation marks omitted); *see also, e.g., Mims v. Walsh*, No. 04 Civ. 6133 (BSJ) (FM), 2012 WL 6699070, at *2 (S.D.N.Y. Dec. 23, 2012) (citing *Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006)).

Because neither Vidalco nor the defendant has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Fox's Report reveals no facial error in its conclusions. The Report is therefore adopted in its entirety. Because the Report explicitly states that “[f]ailure to object within fourteen (14) days will result in a waiver of objections and will

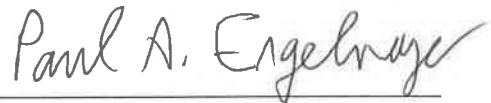
preclude appellate review,” Report at 4 (emphases omitted), both parties’ failure to object operates as a waiver of appellate review. *See Monroe v. Hyundai of Manhattan & Westchester*, 372 F. App’x 147, 147–48 (2d Cir. 2010) (summary order) (citing *Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992)).

CONCLUSION

For the reasons stated herein, the Court adopts the Report in full. Vidalco is hereby awarded \$101,079.88 in statutory damages, and interest of nine percent per annum on \$101,079.88, to be calculated commencing on May 2, 2016 and ending on the date of the judgment.

The Clerk of Court is respectfully directed to terminate all pending motions, and to close this case.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: April 4, 2019
New York, New York